IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

MICHELLE KEELING,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. : 4:17-CV-01331
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

COMPLAINT

COUNT I
Administrative Negligence

COMES NOW Plaintiff Michelle Keeling and for Count I of her Complaint against of Defendant UNITED STATES OF AMERICA, states as follows:

1. JURISDICTION: Jurisdiction is proper under 28 U.S.C. §1346(b). This Count is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, et seq. State action claims herein, if any, are brought pursuant to this Court's supplemental jurisdiction, 28 U.S.C. §1367.

2. An administrative claim pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, et seq., was timely made and served upon the Department of Veterans Affairs on April 8, 2016, and the same was denied by the agency by mail dated October 17, 2016, and this suit is subsequently filed timely under both the FTCA and Missouri law.

3. VENUE: Venue is proper in this District pursuant to 28 U.S.C. §1402 and 28 U.S.C. §1346 as Plaintiff is and was at all relevant times a resident and citizen of this Judicial District and the tortious acts or omissions complained of occurred within this Judicial District.

4. At all times relevant hereto, Plaintiff is and was an adult resident and citizen of the State of Missouri whose husband is an honorably discharged Veteran of the U.S. military;

5. At all times relevant hereto, The Department of Veterans Affairs Medical Center at St. Louis, Missouri, a/k/a "Cochran Veterans Affairs Medical Center", "Cochran VAMC", "Cochran VA Hospital" were and are a part of the Department of Veterans Affairs, an agency of the U.S. government and did own, control, manage or operate a medical center and hospital in the City of St. Louis, State of Missouri, and elsewhere in Missouri, and did employ physicians, nurses and other licensed medical professionals to practice medicine and/or their health-care related professions, and did hold itself out to the public and to Plaintiff as providing qualified medical and hospital services.

6. At all times relevant hereto, Department of Veterans Affairs Medical Center at St. Louis, Missouri ["STLVAMC" or "COCHRAN"] was a part of the federal government or was a "Federal Agency" as defined in 28 U.S.C. §2671, et seq., and said Hospital and each individual herein named was acting within the scope of its agency or employment by the United States Department of Veterans Affairs.

7. At all times relevant hereto, Plaintiff's husband was being treated as a patient at STLVAMC, and the employees and agents of STLVAMC owed to her husband, the duty to provide hospital, nursing, and administrative services with the skill and care of a reasonable physician or other health-care professional in the same or similar circumstances.

8. At all times relevant hereto, Plaintiff was properly and lawfully on the property of STLVAMC visiting her husband who was recovering from surgery.

9. At all relevant times, Defendant UNITED STATES OF AMERICA acted by and

through COCHRAN VAMC and its actual and apparent agents and employees, including its physicians, administrators, nurses, technicians, social workers, aides, and including, but not limited to, each of the individuals named herein, and did hold each of said care providers out as its employee or agent, both by express statement and/or by action and uniform or insignia, and Plaintiff did rely upon such representations.

10. At all times relevant hereto, Defendant knew there were and had been numerous physical/sexual assaults on VA medical facilities propertied, being informed through several sources including but not limited to a 2011 GAO Report to the Committee on Veteran's Affairs, House of Representatives titled VA HEALTH CARE, Actions Needed to Prevent Sexual Assaults and Other Safety Incidents, which indicated that almost 300 sexual assaults reported to the VA police were not even reported to VA officials, nor were rape of other reports ever given to the VA OIG, and noting the VA lacked any risk assessment tools to examine sexual assault-related risks in their facilities, and finding that existing precautions were deficient.

11. On or about December 21, 2014, Plaintiff Michelle Keeling was visiting her Veteran husband who was confined to bed while recovering from colon and bladder surgery in room660 within Ward 6N, where he had been administratively placed.

12. At that same time, the room was also occupied by another patient, Barry Keith Peer ("Peer").

13. At that same time and place, no barrier between Peer and Keeling was present, other than a curtain;

14. At that same time and place there was no "sitter" present, nor any direct supervision of Peer during Keeling's occupancy.

15. At no time relevant to this Complaint was there any warning or caution to Keeling or his wife regarding Peer.

16. At approximately 4:30 in the afternoon on said date, Plaintiff was seated in a chair by her husband's hospital bed, watching over him and reading a book when Peer peaked out from behind the curtain and spoke to Plaintiff while openly masturbating.

17. Plaintiff moved to get away from Peer, however he came out from around the curtain and physically attacked her, grabbing her pants and pulling them down.

18. At that time, Plaintiff screamed for help and although she continued screaming Peer continued his attack.

19. At that same time and place, Plaintiff's husband was unable to rise from bed to assist or protect her due to his post-surgical condition.

20. After a period of time while Plaintiff tried to fight her attacker off, a nurse came into the room and attempted to separate Peer from Plaintiff, however Peer had disconnected a tube from his body, and proceeded to squirt his blood and fluid out of what was apparently his surgery drain bag, keeping the nurse at distance.

21. Eventually, Plaintiff Michelle Keeling was able to jump on top of her husband's bed in panic, while fearing that this could disrupt his stitches or tubing, and she was then able to cross the bed and escape the attack by leaving the room.

22. At all times relevant hereto, Peer was a known problematic and potentially dangerous patient who was on a relatively high dosage of Dilaudid by pump, and/or was known to be mentally or emotionally unstable.

23. A one-to-one sitter had been ordered to watch Peer prior to this incident, and two

escorts were designated to accompany Peer on his gurney to or from surgery.

24. Prior to the incident complained of herein, there had been cautions given to female staff regarding Peer and warnings not to be alone with him without male escort.

25. The St. Louis Veterans Administration Medical Center:

a) Defendant failed to respond to the 2011 GAO report on the inadequacy of precautions to prevent sexual assaults on VA premises by improving or adequately modifying its safety precautions;

b) failed to warn female visitors, including Michelle Keeling, of a possible danger from Peer, given his condition or due to prior behaviors;

c) failed to maintain adequate monitoring or control of Peer, including but not limited to failing to maintain a sitter for that patient;

d) failed to adequately or properly evaluate the safety of placing Plaintiff's incapacitated husband in the room with Peer, when his wife would be sitting with him;

e) failed to separate Peer from other patients when it knew or should have known of potential dangers he posed;

f) forced Plaintiff and her husband to leave the room and walk to another down the hall, when her husband was not supposed to walk that soon after abdominal surgery;

g) Failed to have proper or adequate administrative procedures regarding placing patients in rooms, or on floors, with potentially dangerous patients;

h) Failed to have proper or adequate administrative procedures to protect visitors from potential dangerous conditions including dangerous patients;

i) Medicated patient Peer in a manner to cause unstable or dangerous behavior.

j) After the attack, Defendant's administrative personnel treated Plaintiff and her husband abusively or dismissively;

k) Defefendant sent a prescription for Xanax to Plaintiff's home, leaving the same on the home's porch, without being requested to do so.

l) failed to respond timely to the attack on Plaintiff;

26. By one or more of the acts or omissions as set out in paragraph 24 above, Defendant was negligent;

27. As a direct and proximate result of one or more of the negligent acts or omissions as stated above, Plaintiff Michelle Keeling suffered physical attack and attendant pain and suffering and emotional injury, including but not limited to extreme emotional distress, and anxiety, fear of everyday or otherwise ordinary situations and people; insomnia, difficulties with her relationships, and loss of her ability to conduct her daily affairs normally, a loss of the enjoyment of life, and inability to use VA medical facilities for her husband's care, and economic losses related thereto in amounts to be determined.

WHEREFOR, for the reasons stated above, Plaintiff Michelle Keeling prays this Court enter judgment in her favor and against Defendant United States of America in an amount reasonable and sufficient to compensate for her loss and damage, for costs of suit, and for such other relief as this Court deems just and proper.

COUNT II
Premises Liability

COMES NOW Plaintiff Michelle Keeling and for Count II of her Complaint against Defendant UNITED STATES OF AMERICA, states as follows:

1. JURISDICTION: Jurisdiction is proper under 28 U.S.C. §1346(b). This Count is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, et seq. State action claims herein, if any, are brought pursuant to this Court's supplemental jurisdiction, 28 U.S.C. §1367.

2. An administrative claim pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, et seq., was timely made and served upon the Department of Veterans Affairs on April 8, 2016, and the same was denied by the agency by mail dated October 17, 2016, and this suit is subsequently filed timely under both the FTCA and Missouri law.

3. VENUE: Venue is proper in this District pursuant to 28 U.S.C. §1402 and 28 U.S.C. §1346 as Plaintiff is and was at all relevant times a resident and citizen of this Judicial District and the tortious acts or omissions complained of occurred within this Judicial District.

4. At all times relevant hereto, Plaintiff is and was an adult resident and citizen of the State of Missouri whose husband is an honorably discharged Veteran of the U.S. military;

5. At all times relevant hereto, The Department of Veterans Affairs Medical Center at St. Louis, Missouri, a/k/a "Cochran Veterans Affairs Medical Center", "Cochran VAMC", "Cochran VA Hospital" were and are a part of the Department of Veterans Affairs, an agency of the U.S. government and did own, control, manage or operate a medical center and hospital in the City of St. Louis, State of Missouri, and elsewhere in Missouri, and did employ physicians, nurses and other licensed medical professionals to practice medicine and/or their health-care related professions, and did hold itself out to the public and to Plaintiff as providing qualified

medical and hospital services.

6. At all times relevant hereto, Department of Veterans Affairs Medical Center at St. Louis, Missouri ["STLVAMC" or "COCHRAN"] was a part of the federal government or was a "Federal Agency" as defined in 28 U.S.C. §2671, et seq., and said Hospital and each individual herein named was acting within the scope of its agency or employment by the United States Department of Veterans Affairs.

7. At all times relevant hereto, Plaintiff's husband was being treated as a patient at STLVAMC, and the employees and agents of STLVAMC owed to her husband, the duty to provide hospital, nursing, and administrative services with the skill and care of a reasonable physician or other health-care professional in the same or similar circumstances.

8. At all times relevant hereto, Plaintiff was properly and lawfully on the property of STLVAMC visiting her husband who was recovering from surgery and was an invitee of Defendant.

9. At all relevant times, Defendant UNITED STATES OF AMERICA acted by and through COCHRAN VAMC and its actual and apparent agents and employees, including its physicians, administrators, nurses, technicians, social workers, aides, and including, but not limited to, each of the individuals named herein, and did hold each of said care providers out as its employee or agent, both by express statement and/or by action and uniform or insignia, and Plaintiff did rely upon such representations.

10. At all times relevant hereto, Defendant knew there were and had been numerous physical/sexual assaults on VA medical facilities propertied, being informed through several sources including but not limited to a 2011 GAO Report to the Committee on Veteran's Affairs,

House of Representatives titled VA HEALTH CARE, Actions Needed to Prevent Sexual Assaults and Other Safety Incidents, which indicated that almost 300 sexual assaults reported to the VA police were not even reported to VA officials, nor were rape of other reports ever given to the VA OIG, and noting the VA lacked any risk assessment tools to examine sexual assault-related risks in their facilities, and finding that existing precautions were deficient.

11. On or about December 21, 2014, Plaintiff Michelle Keeling was visiting her Veteran husband who was confined to bed while recovering from colon and bladder surgery in room660 within Ward 6N, where he had been administratively placed.

12. At that same time, the room was also occupied by another patient, Barry Keith Peer ("Peer").

13. At that same time and place, no barrier between Peer and Keeling was present, other than a curtain;

14. At that same time and place there was no "sitter" present, nor any direct supervision of Peer during Keeling's occupancy.

15. At no time relevant to this Complaint was there any warning or caution to Keeling or his wife regarding Peer.

16. At approximately 4:30 in the afternoon on said date, Plaintiff was seated in a chair by her husband's hospital bed, watching over him and reading a book when Peer peaked out from behind the curtain and spoke to Plaintiff while openly masturbating.

17. Plaintiff moved to get away from Peer, however he came out from around the curtain and physically attacked her, grabbing her pants and pulling them down.

18. At that time, Plaintiff screamed for help and although she continued screaming

Peer continued his attack.

19. At that same time and place, Plaintiff's husband was unable to rise from bed to assist or protect her due to his post-surgical condition.

20. After a period of time while Plaintiff tried to fight her attacker off, a nurse came into the room and attempted to separate Peer from Plaintiff, however Peer had disconnected a tube from his body, and proceeded to squirt his blood and fluid out of what was apparently his surgery drain bag, keeping the nurse at distance.

21. Eventually, Plaintiff Michelle Keeling was able to jump on top of her husband's bed in panic, while fearing that this could disrupt his stitches or tubing, and she was then able to cross the bed and escape the attack by leaving the room.

22. At all times relevant hereto, Peer was a known problematic and potentially dangerous patient who was on a relatively high dosage of Dilaudid by pump, and/or was known to be mentally or emotionally unstable.

23. A one-to-one sitter had been ordered to watch Peer prior to this incident, and two escorts were designated to accompany Peer on his gurney to or from surgery.

24. Prior to the incident complained of herein, there had been cautions given to female staff regarding Peer and warnings not to be alone with him without male escort.

25. At the time of the incident described herein, the St. Louis Veterans Administration Medical Center's property was not reasonably safe for visitors because there was a patient in the room with Plaintiff's husband who posed potential dangers to visitors;

26. By the use of ordinary care, Defendant could have known of the hazardous or dangerous condition;

27. Defendant failed to use ordinary care to warn Plaintiff or her husband, and/or failed to separate the dangerous patient from visitors or protect visitors from the potential danger, and/or failed to provide a guard or sitter in the room, and/or failed to remove the danger, and/or placed Plaintiff's husband in the room with the potentially dangerous patient exposing Plaintiff to the danger;

28. As a direct and proximate result of one or more of the negligent acts or omissions as stated above, Plaintiff Michelle Keeling suffered physical attack and attendant pain and suffering and emotional injury, including but not limited to extreme emotional distress, and anxiety, fear of everyday or otherwise ordinary situations and people; insomnia, difficulties with her relationships, and loss of her ability to conduct her daily affairs normally, a loss of the enjoyment of life, and inability to use VA medical facilities for her husband's care, and economic losses related thereto in amounts to be determined.

WHEREFOR, for the reasons stated above, Plaintiff Michelle Keeling prays this Court enter judgment in her favor and against Defendant United States of America in an amount reasonable and sufficient to compensate for her loss and damage, for costs of suit, and for such other relief as this Court deems just and proper.

COUNT III
Medical Negligence

COMES NOW Plaintiff Michelle Keeling and for Count III of her Complaint against of Defendant UNITED STATES OF AMERICA, states as follows:

1. JURISDICTION: Jurisdiction is proper under 28 U.S.C. §1346(b). This Count is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, et seq. State action claims herein, if any, are brought pursuant to this Court's supplemental jurisdiction, 28 U.S.C. §1367.

2. An administrative claim pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, et seq., was timely made and served upon the Department of Veterans Affairs on April 8, 2016, and the same was denied by the agency by mail dated October 17, 2016, and this suit is subsequently filed timely under both the FTCA and Missouri law.

3. VENUE: Venue is proper in this District pursuant to 28 U.S.C. §1402 and 28 U.S.C. §1346 as Plaintiff is and was at all relevant times a resident and citizen of this Judicial District and the tortious acts or omissions complained of occurred within this Judicial District.

4. At all times relevant hereto, Plaintiff is and was an adult resident and citizen of the State of Missouri whose husband is an honorably discharged Veteran of the U.S. military;

5. At all times relevant hereto, The Department of Veterans Affairs Medical Center at St. Louis, Missouri, a/k/a "Cochran Veterans Affairs Medical Center", "Cochran VAMC", "Cochran VA Hospital" were and are a part of the Department of Veterans Affairs, an agency of the U.S. government and did own, control, manage or operate a medical center and hospital in the City of St. Louis, State of Missouri, and elsewhere in Missouri, and did employ physicians,

nurses and other licensed medical professionals to practice medicine and/or their health-care related professions, and did hold itself out to the public and to Plaintiff as providing qualified medical and hospital services.

6. At all times relevant hereto, Department of Veterans Affairs Medical Center at St. Louis, Missouri [“STLVAMC” or “COCHRAN”] was a part of the federal government or was a “Federal Agency” as defined in 28 U.S.C. §2671, et seq., and said Hospital and each individual herein named was acting within the scope of its agency or employment by the United States Department of Veterans Affairs.

7. At all times relevant hereto, Plaintiff’s husband was being treated as a patient at STLVAMC, and the employees and agents of STLVAMC owed to her husband, the duty to provide hospital, nursing, and administrative services with the skill and care of a reasonable physician or other health-care professional in the same or similar circumstances.

8. At all times relevant hereto, Plaintiff was properly and lawfully on the property of STLVAMC visiting her husband who was recovering from surgery.

9. At all relevant times, Defendant UNITED STATES OF AMERICA acted by and through COCHRAN VAMC and its actual and apparent agents and employees, including its physicians, administrators, nurses, technicians, social workers, aides, and including, but not limited to, each of the individuals named herein, and did hold each of said care providers out as its employee or agent, both by express statement and/or by action and uniform or insignia, and Plaintiff did rely upon such representations.

10. At all times relevant hereto, Defendant knew there were and had been numerous physical/sexual assaults on VA medical facilities propertied, being informed through several

sources including but not limited to a 2011 GAO Report to the Committee on Veteran's Affairs, House of Representatives titled VA HEALTH CARE, Actions Needed to Prevent Sexual Assaults and Other Safety Incidents, which indicated that almost 300 sexual assaults reported to the VA police were not even reported to VA officials, nor were rape of other reports ever given to the VA OIG, and noting the VA lacked any risk assessment tools to examine sexual assault-related risks in their facilities, and finding that existing precautions were deficient.

11. On or about December 21, 2014, Plaintiff Michelle Keeling was visiting her Veteran husband who was confined to bed while recovering from colon and bladder surgery in room660 within Ward 6N, where he had been administratively placed.

12. At that same time, the room was also occupied by another patient, Barry Keith Peer ("Peer").

13. At that same time and place, no barrier between Peer and Keeling was present, other than a curtain;

14. At that same time and place there was no "sitter" present, nor any direct supervision of Peer during Keeling's occupancy.

15. At no time relevant to this Complaint was there any warning or caution to Keeling or his wife regarding Peer.

16. At approximately 4:30 in the afternoon on said date, Plaintiff was seated in a chair by her husband's hospital bed, watching over him and reading a book when Peer peaked out from behind the curtain and spoke to Plaintiff while openly masturbating.

17. Plaintiff moved to get away from Peer, however he came out from around the curtain and physically attacked her, grabbing her pants and pulling them down.

18. At that time, Plaintiff screamed for help and although she continued screaming Peer continued his attack.

19. At that same time and place, Plaintiff's husband was unable to rise from bed to assist or protect her due to his post-surgical condition.

20. After a period of time while Plaintiff tried to fight her attacker off, a nurse came into the room and attempted to separate Peer from Plaintiff, however Peer had disconnected a tube from his body, and proceeded to squirt his blood and fluid out of what was apparently his surgery drain bag, keeping the nurse at distance.

21. Eventually, Plaintiff Michelle Keeling was able to jump on top of her husband's bed in panic, while fearing that this could disrupt his stitches or tubing, and she was then able to cross the bed and escape the attack by leaving the room.

22. At all times relevant hereto, Peer was a known problematic and potentially dangerous patient who was on a relatively high dosage of Dilaudid by pump, and/or was known to be mentally or emotionally unstable.

23. A one-to-one sitter had been ordered to watch Peer prior to this incident, and two escorts were designated to accompany Peer on his gurney to or from surgery.

24. Prior to the incident complained of herein, there had been cautions given to female staff regarding Peer and warnings not to be alone with him without male escort.

25. Defendant, by and through its employees and agents, committed one or more of the following negligent acts or omissions:

a) Defendant's nurses or other health care providers failed to follow physician orders by not providing a sitter in the room with patient Peer;

b) Defendant failed to have proper or adequate orders in place to have a sitter or guard watching patient Peer, or failed to properly and adequately transmit or communicate such orders to staff;

c) Defendant failed to have adequate or proper policies or procedures in place to assure that vulnerable patients or visitors were not placed with potentially dangerous patients;

d) Defendant knew or should have known that patient Peer was over medicated or otherwise not in control of himself sufficiently to pose unstable or dangerous behavior and failed to adequately control him or protect Plaintiff's husband and his visitor;

e) Defendant forced Plaintiff and her husband to leave the room and walk to another down the hall, when her husband was not supposed to walk that soon after abdominal surgery;

f) Failed to have proper or adequate administrative procedures regarding placing patients in rooms, or on floors, with potentially dangerous patients;

g) Failed to have proper or adequate administrative procedures to protect visitors from potential dangerous conditions including dangerous patients;

h) Defendant sent a prescription for Xanax to Plaintiff's home, leaving the same on the home's porch, without being requested to do so.

26. As a direct and proximate result of one or more of the negligent acts or omissions as stated above, Plaintiff Michelle Keeling suffered physical attack and attendant pain and suffering and emotional injury, including but not limited to extreme emotional distress, and

anxiety, fear of everyday or otherwise ordinary situations and people; insomnia, difficulties with her relationships, and loss of her ability to conduct her daily affairs normally, a loss of the enjoyment of life, and inability to use VA medical facilities for her husband's care, and economic losses related thereto in amounts to be determined.

WHEREFOR, for the reasons stated above, Plaintiff Michelle Keeling prays this Court enter judgment in her favor and against Defendant United States of America in an amount reasonable and sufficient to compensate for her loss and damage, for costs of suit, and for such other relief as this Court deems just and proper.

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